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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 Consumer Financial Protection Bureau
and Maria T. Vullo, Superintendent of
17 Financial Services of the State of
New York,

18 Plaintiffs,

19 v.

20 Pension Funding, LLC; Pension
Income, LLC; Steven Covey; Edwin
21 Lichtig; and Rex Hofelter,

22 Defendants.
23

Case No. 8:15-cv-1329

**RECEIVER'S FIFTH INTERIM
REPORT**

24 Ctrm.: 10A
25 Judge: Hon. Josephine L. Staton
26
27
28

1 Krista L. Freitag ("Receiver"), the Court-appointed permanent receiver for
2 Pension Funding, LLC, Pension Income, LLC, and their subsidiaries, affiliates, and
3 successors-in-interest, including PGR, LLC (collectively, "Receivership Entities"),
4 hereby submits this fifth interim report. This report covers the Receiver's activities
5 from January 1, 2017 through March 31, 2017.

6 I. EXECUTIVE SUMMARY

7 This equity receivership arises from the Complaint for Violations of the
8 Consumer Financial Protection Act and New York Banking and Financial Services
9 Laws ("Complaint") (Dkt. No. 1) filed on August 20, 2015, by the Consumer
10 Financial Protection Bureau ("Bureau") and Superintendent of Financial Services of
11 the State of New York ("Superintendent").

12 On or about January 8, 2016, pursuant to the Court's Order Entering
13 Stipulated Preliminary Injunction, Appointment of a Receiver, and Related Matters
14 ("Appointment Order"), the Receiver took control of the Receivership Entities, their
15 books and records, bank accounts, and assets. The Receiver promptly assumed
16 responsibility of all servicing operations and collections pursuant to the
17 Appointment Order. As of March 31, 2017, the Receiver had secured and recovered
18 approximately \$2.23 million¹ in cash and a \$1.1 million participating interest in a
19 commercial real estate loan. The other assets of the Receivership Entities, including
20 the receivables from Pensioners, are discussed further below.

21 On October 19, 2016, the Receiver filed the Receiver's Forensic Accounting
22 Report and Recommendations (Dkt. No. 116), orders on which were entered on
23 December 14, 2016 and January 4, 2017. Pursuant to the Court's December 14,
24 2016 order, the Receiver and her staff worked to complete and by the end of
25 December 2016, sent all third-party investors a letter detailing their net loss
26 calculation, explaining the claims process, and providing them with 60 days to

27 ¹ This ending balance is after issuance of refunds in the amount of nearly \$700,000
28 for pensioner lump-sum overpayments.

1 respond with any comments, questions or concerns thereto. With no disputes to the
2 net loss calculations, at the end of the 60-day period, the Receiver worked with
3 counsel to prepare the proposed allowed claims schedule, distribution plan, motion
4 for approval thereof, and performed the calculations of proposed interim
5 distributions to those with proposed allowed claims.

6 On April 25, 2017, the Receiver filed her Notice of Motion and Motion for,
7 (a) Approval of Proposed Allowed Claim Amounts, (b) Approval of Distribution
8 Plan, and (c) Authority to Make Interim Distributions (“Distribution Motion”) (Dkt.
9 No. 139), which is set for hearing on June 2, 2017.

10 Meanwhile, the Receiver continues her efforts to preserve, protect, identify,
11 collect and maximize the value of receivership assets, including monetization of the
12 loan participation interest, as further discussed below.

13 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

14 As noted above, on August 20, 2015, the Bureau and Superintendent filed
15 their Complaint against Defendants Pension Funding, LLC, Pension Income, LLC,
16 Steven Covey, Edwin Lichtig, and Rex Hofelter. The Complaint alleges that
17 Defendants violated the Consumer Financial Protection Act of 2010 and New York
18 state law by making "pension advances" to pensioners while (a) failing to disclose
19 the transactions were loans, (b) failing to disclose or misrepresenting the interest
20 rate associated with the loans, (c) making various other misrepresentations about the
21 terms and/or benefits of the loans to pensioners, (d) charging interest rates to
22 pensioners located in New York that exceeded the maximum rate allowed by
23 New York law, and (e) engaging in the business of money transmitting without a
24 money transmitter license.

25 On October 7, 2015, the Bureau and Superintendent moved for a preliminary
26 injunction, appointment of a receiver, and other equitable relief ("Receiver
27
28

1 Motion"). With the exception of Steven Covey,² Defendants answered the
2 Complaint on October 23, 2015. Defendants then opposed the Receiver Motion on
3 October 30, 2015. At the hearing on the Receiver Motion held on December 18,
4 2015, the parties informed the Court that they had agreed upon a stipulation
5 regarding preliminary injunction. Dkt. No. 56. The Joint Stipulation Requesting
6 Entry of Stipulated Preliminary Injunction, Appointment of a Receiver, and Related
7 Orders was filed on December 21, 2015. Dkt. No. 57. On January 8, 2015, the
8 Court entered the Appointment Order. Dkt. No. 61.

9 In accordance with the Appointment Order and the law governing federal
10 equity receiverships, upon her appointment, the Receiver promptly took steps to
11 implement the terms and provisions of the Appointment Order, including (a) taking
12 control of all accounts of the Receivership Entities, (b) imaging and preserving all
13 electronic data of the Receivership Entities, (c) securing and taking possession of all
14 hard copy records and documents of the Receivership Entities, and (d) investigating,
15 issuing subpoenas, and gathering records as to the assets and potential claims of the
16 Receivership Entities.

17 On January 22, 2016, the Court entered the Stipulated Judgment. On
18 March 1, 2016, the Receiver filed a Motion for Order in Aid of Receivership (Dkt.
19 No. 71), seeking authority to engage Allen Matkins Leck Gamble Mallory &
20 Natsis LLP ("Allen Matkins") as her general counsel, for relief from Local
21 Rule 66-5 and 66-7 and to file interim reports and interim fee applications on a
22 quarterly basis. The Court held a hearing on April 13, 2016, at which time it stated
23 it would grant the Receiver authority to engage Allen Matkins, grant relief from the
24 requirement to serve notices by mail under Local Rule 66-7, extend the deadline
25 under Local Rule 66-5 to file a schedule of known creditors to July 2016, and allow

26 ² Mr. Covey has not answered the Complaint or otherwise appeared in the action.
27 A default judgment was entered against him on July 11, 2016. Dkt. No. 97.
28 Accordingly, all references to actions taken by "Defendants" are to Pension
Funding, LLC, Pension Income, LLC, Edwin Lichtig, and Rex Hofelter.

1 the schedule of known creditors to be filed under seal (pursuant to an application the
2 Receiver will file in accordance with the Local Rules). The Receiver's application
3 to file the schedule of known creditors under seal was filed concurrently with the
4 Receiver's Second Interim Report (Dkt. No. 100).

5 On March 25, 2016, Defendant Rex Hofelter made the \$40,000 payment
6 required under the Stipulated Judgment. Defendant Edwin Lichtig filed bankruptcy
7 in the Northern District of California, then voluntarily dismissed his bankruptcy and
8 paid the full \$282,000 with interest to the Receiver on April 26, 2016.

9 On October 19, 2016, the Receiver's Forensic Accounting Report and
10 Recommendations was filed (Dkt. No. 116) and heard on December 9, 2016. On
11 December 14, 2016, the Court issued its Order Approving In Part the Receiver's
12 Report and Recommendations (Dkt. No. 125). On December 21, 2016, the Receiver
13 filed her Ex Parte Application for Approval of Recommended ADR Procedure for
14 Investor Claim Disputes (Dkt. No. 126). On January 4, 2017, the Court issued its
15 Order Denying the Receiver's Ex Parte Application and Adopting a Revised
16 Investor Dispute Resolution Process (Dkt. No. 128).

17 And on April 25, 2017, the Receiver filed her Notice of Motion and Motion
18 for, (a) Approval of Proposed Allowed Claim Amounts, (b) Approval of
19 Distribution Plan, and (c) Authority to Make Interim Distributions ("Distribution
20 Motion") (Dkt. No. 139), which is set for hearing on June 2, 2017.

21 **III. SUMMARY OF RECEIVER'S ACTIVITIES**

22 **A. Cash Recoveries**

23 As discussed in the Receiver's prior interim reports, the balance in the
24 Receivership Entities' accounts as of her appointment on January 8, 2016, was
25 \$526,664. As of March 31, 2016, September 30, 2016, and December 31, 2016, the
26 Receivership Entity cash balance had increased to \$2,086,361, \$2,500,797, and
27 \$2,787,495, respectively.

28

1 Between January 1, 2017, and March 31, 2017, the Receiver recovered and
2 took possession of a total of \$333,409 of additional funds, which primarily resulted
3 from the following:

- 4 • \$311,060 from Pensioner payments (payments net of
5 rejections/insufficient fund payments);
- 6 • \$21,698 in payments on the aforementioned \$1.1 million loan
7 participation interest; and
- 8 • \$651 of miscellaneous and interest income.

9 However, amongst other expenses, during the first quarter of 2017, the
10 receivership estate also paid refunds to the Pensioners who overpaid their lump-sum
11 balances in the total amount of \$698,527.68, which reduced the cash balance to
12 \$2,226,586.

13 **B. Pensioner Communications and Collections**

14 As a result of the Court's orders, the Receiver proceeded to communicate via
15 email and physical mail with Pensioners to ensure they understand their Court-
16 ordered Lump Sum payment responsibility. This communication prompted several
17 defaulted Pensioners to resume payment and/or prompted Pensioners to pay off their
18 remaining Lump Sum owing in full. The Receiver also prepared and, during the
19 first quarter of 2017, issued the return of all overpayment amounts to Pensioners
20 who made payments in excess of their Lump Sums. She has also commenced her
21 collection efforts by gathering information, working to first determine the likely
22 costs and benefits of such efforts, and sending collection letters to pensioners.

23 **C. Investor Claims Process**

24 Pursuant to the Court's December 14, 2016 Order, the Receiver also
25 commenced the Investor claims process by sending each Investor an email
26 explanation and an official Claims Notice via USPS Certified Return Receipt Mail,
27 which clearly explains the claims process and includes a summary and detailed
28 schedule reflecting the detailed and summarized total amounts paid and received,

1 and thus each contract's net loss. Such net loss will be the basis for each Investor's
2 claim calculation.

3 In the correspondence, the Receiver clearly explained that if the list of
4 payments and the net loss amount reflected on the schedule are accurate, no action is
5 necessary. If, on the other hand, Investors disagree with the schedule, they were
6 directed to respond in writing to the Receiver (email or physical mail) within
7 60 days of the date of the letter, state the nature of the dispute, and provide copies of
8 all documentation supporting the disputed position, including bank records showing
9 payments believed to be missing.

10 With the passing of the 60-day window and no disputes received, the
11 Receiver worked with counsel to prepare the proposed allowed claims schedule,
12 distribution plan, motion for approval thereon and performed the proposed interim
13 distribution calculations to those with proposed allowed claims. As previously
14 mentioned, the Distribution Motion was filed on April 25, 2017, and is set for
15 hearing on June 2, 2017.

16 **D. General Communications**

17 The Receiver established a dedicated web page on her website which provides
18 case information and updates for Pensioners and Investors. With progression of the
19 case, frequently asked questions are added to the website. The Internet address for
20 the webpage is <http://www.ethreadvisors.com/cfpb-case-docs>. In addition, the
21 Receiver is maintaining a dedicated e-mail address and telephone line for Pensioner
22 and Investor inquiries and regularly returns emails and phone calls from Pensioners
23 and Investors.

24 **IV. POST-RECEIVERSHIP RECEIPTS AND DISBURSEMENTS**

25 **A. Consolidated Cash Activity**

26 The following summary reflects the Receivership Entities' consolidated cash
27 balance as of March 31, 2017:

28

1	East West Bank - Receiver	\$1,830,025
2	South County Bank - Receiver	\$209,927
3	South County Bank – PGR Reserve	\$203,187
4	South County Bank – PGR Management	\$5,000
5	South County Bank – PGR General	\$61
6	South County Bank – PGR Future Obligations	\$5,000
7	South County Bank - Pension Income	\$6,303
8	South County Bank - Pension Funding	Closed
9	Grand Total	\$2,259,503

10 As of March 31, 2017, outstanding checks totaled \$32,917, resulting in a
11 March 31, 2017 reconciled cash balance of \$2,226,586.

12 The following is a summary of the consolidated cash activity in the Receiver-
13 controlled Receivership Entities' bank accounts for the period from January 1, 2017,
14 through March 31, 2017:

15	Account Cash Balance at 12/31/16	\$2,787,495
16	Collection - Loan Interest (Jan.-Mar.)	\$21,699
17	Collection - Pensioner Payments (Jan.-Mar.)	\$314,247
18	Collection - Other Misc. & Interest	\$651
19	Pensioner Payments Rejected	(\$3,187)
20	Receiver Fees	(\$99,496)
21	Receiver Legal Fees	(\$80,217)
22	Return of Pensioner Lump-Sum Overpayments	(\$698,528)
23	Other Miscellaneous Expenses	(\$16,078)
24	Cash Book Balance at 3/31/17	\$2,226,586

25 The following is a summary of the consolidated cash activity in the Receiver-
26 controlled Receivership Entities' bank accounts for the period from January 7, 2016
27 through March 31, 2017:

1	Account Cash Balance at 1/7/16³	\$689,737
2	January 8, 2016 Pensioner Payments	\$99,009 ⁴
3	January 8, 2016 Investor Payments	(\$262,082) ⁵
4	Recovery – Bird Marella Law Firm Retainer	\$9,743
5	Recovery – David Arietta Law Firm Retainer	\$14,084
6	Recovery – Ramsey Law Firm Retainer	\$7,472
7	Collection – Loan Principal	\$100,000
8	Collection – Loan Interest (Feb. 16-Mar. 17)	\$103,139
9	Collection – Rex Hofelter Judgment	\$40,000
10	Collection – Ed Lichtig Judgment	\$282,108
11	Collection – Pensioner Payments (Feb. 16-Mar. 17)	\$2,278,545
12	Collection – Other Misc. & Interest	\$2,516
13	Pensioner Payments Rejected (Feb. 16-Mar. 17)	(\$46,742)
14	Receiver Fees	(\$225,960)
15	Receiver Legal Fees	(\$136,329)
16	Return of Pensioner Lump-Sum Overpayments	(\$698,528)
17	Other Miscellaneous Expenses ⁶	(\$30,126)
18	Cash Book Balance at 3/31/17	\$2,226,586

V. RECOMMENDATIONS

As a general matter, the Receiver continues to marshal, preserve and protect the assets of the Receivership Entities, investigate and pursue recovery of any misappropriated funds, if any, and carry out her other duties under the Court's orders.

A. Receivership Asset Recovery Efforts and Investigation

The Receiver will continue to collect Pensioner Lump Sum payments and seek to locate any presently unaccounted for or misappropriated receivership assets

⁴ Pensioner payments collected prior to the Receiver's appointment, but posted to the account on January 8, 2016.

⁵ Payments to Investors issued prior to the Receiver's appointment, but posted to the account on January 8, 2016.

⁶ Primarily reflects Pensioner asset search fees, bank fees, income tax return and income-tax related payments.

1 that may exist. The Receiver is also in the process of pursuing cost-effective
2 collections where appropriate.

3 **B. Maximize Value of Other Assets**

4 During the first quarter of 2017, the Receiver also consummated her efforts to
5 recover and maximize the value of the Receivership Entities' \$1.1 million loan
6 participation interest ("Loan Participation"). As discussed in the Receiver's pending
7 motion for approval of the proposed sale transaction (Dkt. No. 140), the
8 Receivership Entities invested a total of \$1.6 million in the Loan Participation.
9 With no control over the master loan or the underlying collateral, with a maturity
10 date that had already passed, and with no ability to assign/sell the participation
11 interest without the lead lender's approval, the Receiver deemed it in the best
12 interest of the receivership estate to pursue a sale to a buyer located by the lender. If
13 the Court approves the pending motion for approval of the proposed sale, and
14 including pre-receivership and post-receivership interest and principal payments, the
15 Receivership Entities will have recovered a total of \$1,724,951.30 in payments on
16 the original \$1.6 million investment.

17 **C. Quarterly Reports**

18 The Receiver will continue to file, on a quarterly basis, interim reports and
19 interim fee applications for herself and her counsel.

20
21 Dated: May 8, 2017

By: 
KRISTA L. FREITAG
Receiver

22
23
24 Dated: May 8, 2017

ALLEN MATKINS LECK GAMBLE
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